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Special Counsel for Plaintiff

RONALD K. KOTOSHIRODO, Chapter 7 Trustee

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

In re:

JAMES WILLIAM LULL,

Debtor.

RONALD K. KOTOSHIRODO,
CHAPTER 7 TRUSTEE

Plaintiff

v.

RICHARD HOWARD, INC., and
RICHARD HOWARD, individually,

Defendant.

) BK. NO. 06-00898

) (Chapter 7)

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) ADV. NO. 09-_____

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**COMPLAINT; EXHIBITS "A"
and "B"**

COMPLAINT

Plaintiff RONALD K. KOTOSHIRODO ("Plaintiff" or "Trustee"), Trustee
of the above-named Debtor, for his complaint herein states by and through his

undersigned attorneys as follows:

1. This is an action to avoid fraudulent transfers under 11 U.S.C. §§544 and 548, and for recovery of the value of such transfers under 11 U.S.C. §550; for turnover to the Trustee of funds or property belonging to the estate under 11 U.S.C. §542; and is brought as an adversary proceeding in accordance with Bankruptcy Rule 7001, *et. seq.* This Court has jurisdiction to hear this action under 28 U.S.C. §§ 151, 157(a), 157(b)(2)(E) and (F) and 1334(a), and this is a core matter.

2. On December 8, 2006, James William Lull, also known as James W. Lull, (the “Debtor”), filed a Voluntary Petition under Chapter 7 in the United States Bankruptcy Court for the District of Hawai‘i.

3. Plaintiff was appointed as Bankruptcy Trustee for the Debtor on December 8, 2006 for which the Notice of Appointment was filed on December 12, 2006.

4. Defendant RICHARD HOWARD, INC. is a corporation doing business in the State of Ohio. Defendant RICHARD HOWARD is, upon information and belief, a resident of the State of Ohio. Defendants are collectively referred to as “Howard.”

5. Debtor possessed valuable opals (the “Opals”) which he testified were conservatively valued at or more than \$2 Million.

6. In and about the winter and spring of 2006, Debtor consigned the Opals to Sahara Coins, Inc. (“Sahara”), in Las Vegas. Debtor later became indebted to Sahara.

7. In order to satisfy his debt to Sahara, on or about July 8, 2006, Debtor entered into an agreement with Howard whereby the Opals were transferred via Brinks to Howard on July 10, 2006 (the “Transfer”) for which Howard paid \$140,000 to Sahara on behalf of Debtor. The invoice for the Transfer described the contents as an “Opal Collection being returned in its entirety; Insurance Value “2,000,000”. Exhibit “A”.

8. On or about November 9, 2007, Trustee caused a subpoena (the “November 2007 Subpoena”) to be served on Howard demanding production, *inter alia*, of “[a]ll documents which relate to transactions” between Howard and Debtor including “without limitation ... all deliveries, consignments, sales, pledges or other transactions involving coins, gems, or other property” and “[a]ll Documents in your possession or control which refer or relate to the Debtor’s assets, liabilities or financial affairs from 2002 to the present”.

9. In response to the November 2007 Subpoena, Howard produced documents, but no inventory of the Opals. On January 17, 2008, Trustee’s special counsel specifically requested that Howard’s attorney produce “a listing/inventory/photograph of those opals”. No inventory was provided in

response to that letter. On March 16, 2009, Trustee's special counsel again asked Howard's attorney for production of any inventories of the Opals. After further follow up, on May 5, 2009, Howard's attorney finally produced what Howard represented is a handwritten inventory of the Opals dated July 12, 2006 (Exhibit "B").

10. Throughout the period from December 8, 2005 through December 8, 2006, including the entire period of time during which the Opals were transferred to Sahara and then to Howard, Debtor was insolvent as that term is defined in 11 U.S.C. § 101(32).

COUNT I: AVOIDANCE OF FRAUDULENT TRANSFERS
11 USC §548(a)(1)(A)

11. Plaintiff realleges the allegations set forth in paragraph 1-10.

12. The Transfer of the Opals was made to or for Howard's benefit with actual intent to hinder, delay and defraud the Debtor's creditors.

13. The Trustee is entitled to avoid the Transfer of Opals which was made within two years before the filing of the Debtor's bankruptcy petition herein pursuant to 11 U.S.C. §548(a)(1)(A).

COUNT II: AVOIDANCE OF FRAUDULENT TRANSFERS
11 USC §548(a)(1)(B)

14. Plaintiff realleges the allegations set forth in paragraphs 1-13.

15. The Transfer of the Opals was made to or for Howard's benefit and

Lull received less than reasonably equivalent value in exchange for such Transfer or obligation; and Debtor was insolvent on the date that such transfer was made or such obligation was incurred, and/or became insolvent as a result to such transfer or obligation.

16. The Trustee is entitled to avoid the Transfer of Opals which was made within two years before the date of filing of the Debtor's bankruptcy petition herein, pursuant to 11 USC §548(a)(1)(B)(i) and (ii)(I).

COUNT III: TURNOVER
11 U.S.C. §542

17. Plaintiff realleges the allegations set forth in paragraph 1-16.

18. The Opals constitute property of the estate, the value of such property is not inconsequential and, pursuant to 11 U.S.C. §542(a), the Trustee is entitled to an order directing Howard and those acting in concert with Howard to deliver to the Trustee and account for such property or its value.

COUNT IV: AVOIDANCE OF FRAUDULENT TRANSFERS
11 U.S.C. §544(a)

19. Plaintiff realleges the allegations set forth in paragraph 1-18.

20. The Transfer of the Opals to Howard was made with actual intent to deceive, defraud, obstruct, delay and hinder the Debtor's *bona fide* creditors. The Transfer was made for inadequate consideration, and at the time of the Transfer the Debtor was insolvent and had debts beyond his ability to pay as they became due

and/or intended to incur debts beyond his ability to pay.

21. The Transfer was made as part of an ongoing scheme by Howard and the Debtor to hinder, delay and defraud the Debtor's creditors, and they were concealed from the Bankruptcy Court and the Trustee herein as part of such scheme.

22. At the time of the Transfer, there were in existence actual creditors of the Debtor with valid claims against the Debtor, and who could have avoided the Transfer under applicable state law.

23. The Trustee may avoid the Transfer of the Opals under 11 U.S.C. §544, because the Transfer would be voidable by the Debtor's creditors under applicable state law.

COUNT V: AVOIDANCE OF FRAUDULENT TRANSFERS

11 U.S.C. §544(b)

HAWAII UNIFORM FRAUDULENT TRANSFER ACT

24. Plaintiff realleges the allegations set forth in paragraph 1-23 above.

25. The Transfer of the Opals to Howard was in a violation of Hawai'i's Uniform Fraudulent Transfer Act, H.R.S. Chapter 651C which is recoverable by Plaintiff pursuant to 11 U.S.C. § 544 (b).

26. Plaintiff is entitled to the remedies set forth in H.R.S. Chapter 651C, including recovery of the fraudulently transferred assets, judgment for damages for the value of the Opals, injunctive relief, constructive trust and equitable liens to

preserve the estate's interests, accounting, and other relief.

COUNT VI: RECOVERY OF VALUE OF AVOIDED TRANSFER
(11 U.S.C. §550)

27. Plaintiff realleges the allegations set forth in paragraph 1-26 above.

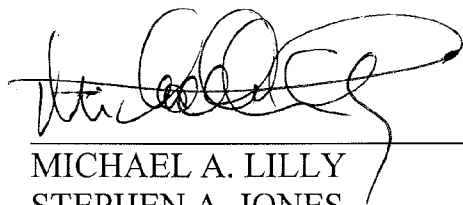
28. The Trustee is entitled to recover from Howard the value of the voidable Transfer pursuant to 11 U.S.C. §550(a).

29. In addition to the value of the Transfer, the Trustee is entitled to recover from Howard prejudgment interest from the dates of the Transfer.

Wherefore, Plaintiff Trustee prays for relief as follows:

1. That the Court avoid the Transfer of the Opals to Howard.
2. That the Court award judgment in favor of the Trustee against Howard for the value of the Transfer of the Opals, together with interest thereon and Plaintiff's attorney fees and costs herein, including prejudgment interest.
3. That the Court award such other and further relief as it may deem equitable and just.

Dated: Honolulu, Hawai'i, May 29 2009.



MICHAEL A. LILLY
STEPHEN A. JONES
Special Counsel for Plaintiff
RONALD K. KOTOSHIRODO
Chapter 7 Trustee

SAHARA COINS, LLC

2580 So. Decatur Blvd., Suite 1-B
Las Vegas, NV 89102
(702) 367-4360 ~ (702) 367-8206 Fax

Invoice

DATE	INVOICE #
7/10/2006	

BILL TO
James W. Lull

PAID

P.O. NO.	TERMS

QUANTITY	DESCRIPTION	RATE	AMOUNT
	Opal Collection being returned in its' entirety*Insurance Value \$2,000,000	0.00	0.00
	Brinks picking up & delivering to: Howard's Attn: Rick Howard 128 East Main Street Leipsic, OH 45856 ph#419-943-2612		
	Receipt of merchandised picked up by Brinks:		
	NAME _____		
	Date _____		
	Tax	7.75%	0.00
Total			\$0.00

ALL MERCHANDISE REMAINS THE PROPERTY OF SAHARA COINS, L.L.C. UNTIL PAID IN GOOD FUNDS. A 1.5% MONTHLY FINANCE CHARGE WILL BE APPLIED TO ANY BALANCE OVER 29 DAYS, WHICH IS AN ANNUAL RATE OF 18%. IF THIS ACCOUNT IS TURNED OVER TO AN ATTORNEY FOR COLLECTION, THE PURCHASER AGREES TO PAY ALL COSTS OF COLLECTION, INCLUDING ATTORNEY FEES, PLUS LEGAL INTEREST. THE PURCHASER HEREBY CONSENTS TO THE JURISDICTION OF ANY COURT WITHIN THE STATE OF NEVADA OR ANY OTHER STATE, FOR PURPOSES OF ANY ACTION ARISING FROM THIS TRANSACTION.

EXHIBIT "A"

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→ JIM LULL

RICHARD HOWARD INC

07/12/2006 13:15 FAX 4199433890

JL02879

7/12/06

Jim Lull

OPAL INVENTORY

CODE OR #

H19 62.33 cts.

0108MP6 22 ct OVAL

1569 3.66 OVAL

0211MP6 (2) 8.8 - 8.82 OVALS

0102RP 21 ct OVAL

0207FME 12.83 OVAL

0302RHM 14.96 OVAL

REDR 8 ct OVAL

42A 15.06 ct OVAL

0328 FME 11.97 OVAL

0502WH 21.46 FREEFORM SHIELD

#18 45.26 BUTTERFLY

0328 HABC 18.74 LONG OVAL

1531 2.33 ct OVAL

1502 16.62 ct OVAL

0511JLC (258) 3.17 OVAL

MJL 202.5 ct FREEFORM OVAL

1532 (10) 2.37 ct OVAL

— 54.00 ct OVAL

D405BC 13.56 OVAL

0511JOC (276) 7.37 OVAL

0511JLC (144) 2.08 LONG OVAL

#21 57.25 ct GREY BASE

0511JOC (147) 1.39 ct ALMOST ROUND

0511JLC 236 3.07 OVAL

REDR 14.69 ct FREEFORM

0511JLC (42) .55 ROUND

— 3

26.76 ct FREEFORM

EXHIBIT "B"

page
2 of 5

0305H6 (230)	9.04 ct.	
1534	4.40 ct	OUAL
0408 PMC	13.19	HALF MOON
5EST106	36.74	OUAL
0511JCC (249)	6.11	OUAL
0511JLC (252)	3.67	OUAL
0405AC	12.85	OUAL
041207 (99)	15.65	OUAL
0511JCC (243)	7.22/7.27	OUALS
0408 PMC	10.92	4 pcs. Freeform
0405 PMC	26.79	6 pcs. Freeform PBD
0511JLC (260)	13.73	OUAL
0511JLC (254)	4.83	OUAL
0412 BCL	17.79	OUAL
0411 BCL (230)	15.30	Freeform (non miton)
18	8.36	OUAL
47	4.96 ct	OUAL
	7.18 ct	OUAL
6 (143)	5.31 ct	OUAL
16	11.62 ct	Freeform
195	19.47 ct	OUAL
—	4.70 ct	PEAR SHAPE
990490-60071	12.61 ct	OUAL
990490-60072	10.34 ct	OUAL
990490-60070	6.73 ct	OUAL
990490-60069	10.88 ct	OUAL
990490-60068	25.13 ct	OUAL
990490-60062	10.31 ct	OUAL
990490-60061	15.60 ct	ROUND

PAGE 3075

990490-60065	6.03 CT	OVAL
990490-60066	7.16 CT	OVAL
990490-60067	5.58 CT	OVAL
990490-60081	5.24 CT	OVAL
990490-60080	6.10 CT	OVAL
990490-60079	6.26 CT	OVAL
990490-60078	18.07 CT	OVAL
990490-60073	6.92 CT	OVAL
990490-60074	11.81 CT	OVAL
990490-60075	1.93 CT	OVAL
990490-60076	2.24 CT	OVAL
990490-60077	8.01 CT	ROUND
990960-60038	7.46 CT	OVAL
990390-60025	3.69 CT	Freeform
990960-60037	13.94 CT	OVAL
990960-60040	3.28 CT	ROUND
990960-60041	11.74 CT	OVAL
990490-60086	16.80 CT	OVAL
990490-60085	1.24 CT	ROUND
990490-60084	2.12 CT	ROUND
990490-60083	10.07 CT	OVAL
993000-60032	4.87 CT	OVAL
993600-60034	7.52 CT	OVAL
993600-60030	8.54 CT	OVAL
993000-60036	35.75 CT	3 PCS OVAL
993000-60028	4.49 CT	OVAL
990490-60082	8.18 CT	OVAL
992400-60026	7.41 CT	OVAL

990960-60061	1.51 CT	ROUND
990960-60050	2.48 CT	ROUND
990960-60059	1.46 CT	ROUND
990960-60060	1.81 CT	OVAL
990960-60058	1.40 CT	ROUND
990960-60044	4.24 CT	ROUND
990960-60045	3.71 CT	OVAL
990960-60049	2.59 CT	OVAL
990960-60046	4.15 CT	OVAL
990960-60043	5.86 CT	OVAL
990960-60055	4.41 CT	OVAL
990960-60054	3.52 CT	OVAL
990960-60047	3.13 CT	OVAL
990960-60052	4.48 CT	OVAL
990960-60053	3.65 CT	OVAL
990960-60051	1.63 CT	OVAL
990960-60057	6.2 CT	OVAL
990390-60001	10.5 CT	OVAL
990390-60002	2.13 CT	OVAL
990390-60003	14.44 CT	OVAL
990960-60056	.96 CT	ROUND
990390-60004	5.03 CT	OVAL
0511JLC (255)	8.02 CT	OVAL
0602PME	3.45 CT	OVAL
993600-60033	5.85 CT	OVAL
—	10.77	OVAL
990390-60024	11.3 CT	Freeform
990390-60023	2.61 CT	OVAL
990390-60077	2.75 CT	OVAL

990390-60021	3.59 CT	OVAC
990390-60020	4.28 CT	OVAC
990390-60019	6.48 CT	OVAC
990390-60018	7.10 CT	OVAC
990390-60017	8.40 CT	ROUND
990390-60016	3.97 CT	OVAC
990390-60015	6.16 CT	OVAC
990390-60009	2.27 CT	OVAC
990390-60008	5.88 CT	OVAC
990390-60007	5.48 CT	ROUND
990390-60006	7.40 CT	OVAC
990390-60014	2.17 CT	OVAC
990390-60013	6.09 CT	OVAC
990390-60012	6.97 CT	OVAC
990390-60011	2.98 CT	OVAC
990390-60005	3.52 CT	OVAC
990390-60010	2.23 CT	OVAC

3 BOARDS 18K

682201 8 BOARDS

0403BCu 16.71 OVAC

38.59

Freeform

(D)

18.53 CT

OVAC

ISYARST

25.76 CT

137